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Docket No. END-5240

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Customer No : 000027777  
Applicants : Robert J. Dunki-Jacobs, et al. Confirmation No. 2410  
Serial No. : 10/713,637 Art Unit: 3737  
Filed : November 14, 2003 Examiner: Jung, William C.  
For : METHODS AND DEVICES FOR DETECTING TISSUE CELLS

I certify this correspondence is being transmitted by facsimile to the United States Patent and Trademark Office on February 1, 2006.

/Gerry Gressel/  
Gerry Gressel, reg#34,342

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PETITION REQUESTING FINAL REJECTION BE MADE NONFINAL**

Dear Sir:

The Commissioner is respectfully requested to make the Examiner's rejection of January 26, 2006 Non-final. This petition is submitted within 2 months of the date of mailing (1/26/06) of the Final Rejection.

Background:

The Examiner's second action of 1/26/06 finally rejected all claims. In the previous response of November 14, 2005, the Applicant amended only one claim, Claim 11. Independent Claims 1 and 12 (as well as their dependent claims) were not amended.

Additionally, the response of November 14, 2005 pointed out that the Examiner had provided no basis for the rejection of Claims 20-22, and the Applicant requested the Examiner point out what in the art of record was relied on by the Examiner to reject the claims so that the Applicant would have a full and fair opportunity to respond.

Serial No. 10/713, 637

The Applicant's response also noted that the Examiner had not indicated what in Kovac taught or suggested using multiple detectors (Claim 24), comparing the outputs of multiple detectors as recited in Claim 25, comparing temporal variation as recited in Claim 26, or employing multiple radiation sources as recited in Claim 27.

It is respectfully urged that the Applicant cannot possibly effectively respond to the Examiner's rejection where the Examiner has not set forth the basis for the rejection. Further, it is respectfully urged that the Examiner's final rejection of 1/26/06 is essentially a final rejection on new grounds not previously raised by the examiner.

Relief Requested

The Commissioner respectfully requests that the a new, non-final rejection be issued that sets forth the basis for the rejection of each claim.

Fee

No Fee is believed to be required. However, if the Commissioner determines a fee is necessary for this petition, authorization is hereby provided to charge any such fee to Deposit Account 10-0750/END5240

Respectfully submitted,

/Gerry Gressel/  
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Dated: February 1, 2006